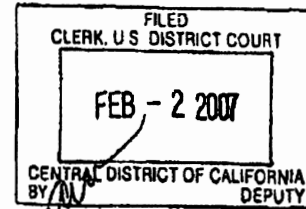
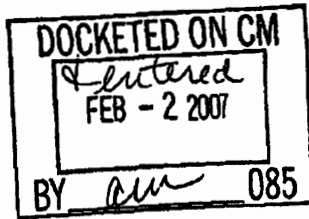


**EXHIBIT 4**

P Send



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

NANCY FERRARO, a single woman;  
LILLIE H. AUGERSON, a single  
woman; LUIGA MORRA, a single  
woman; EVELYN LACEY, a single  
woman; JERRY W. GRAHAM, a  
single woman; MINA A. HOLCOMB,  
a single woman,

Plaintiffs,

vs.

MERCK & CO., INC., a New Jersey  
Corporation; McKESSON  
CORPORATION, a Delaware  
corporation; DOES 1-50

Defendants.

CV 06-7733 FMC (PJWx)

**ORDER GRANTING DEFENDANT'S  
MOTION TO STAY AND DENYING  
PLAINTIFFS' MOTION TO REMAND**

#21

This matter is before the Court on Plaintiffs' Motion to Remand to State Court (docket no. 11), and Defendant Merck & Co., Inc.'s Motion to Stay Proceedings (docket no. 14), filed on January 4, 2007, and January 11, 2007, respectively. The Court has considered the moving and opposition documents submitted in connection with the motions. The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearing set for

1 February 5, 2007, is removed from the Court's calendar. For the reasons and in the  
2 manner set forth below, the Court **GRANTS** Defendant's Motion to Stay and  
3 **DENIES** Plaintiffs' Motion to Remand without prejudice to the filing of a renewed  
4 motion in the event that the Judicial Panel on Multidistrict Litigation ("JPML") does  
5 not transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*  
6 *Prods. Liab. Litig.*

### 7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs Nancy Ferraro, Lillie H. Augerson, Luiga Morra, Evelyn Lacey,  
9 Jerry W. Graham, and Mina A. Holcomb took the prescription drug Fosamax, which  
10 is manufactured and sold by Defendant Merck & Co., Inc. ("Merck") and distributed  
11 by Defendant McKesson Corporation ("McKesson"). Plaintiffs filed their Complaint  
12 in the Superior Court for the State of California, County of Los Angeles, on  
13 December 1, 2006. Plaintiffs allege, *inter alia*, that Defendants misrepresented  
14 (affirmatively and through a failure to warn) that Fosamax was a safe and effective  
15 treatment for osteoporosis, Paget's Disease, and other conditions. Plaintiffs further  
16 allege that, as a proximate result of ingesting Fosamax, they have been permanently  
17 and severely injured.

18 On December 6, 2006, Defendant Merck removed the action to this Court on  
19 the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson,  
20 a California citizen, is fraudulently joined. In their motion to remand, Plaintiffs  
21 argue that joinder was proper. In its Opposition to the motion and in its separate  
22 Motion for Stay, Merck maintains that resolution of the question of the propriety of  
23 Plaintiffs' joinder of McKesson should be deferred pending transfer of this action  
24 to the MDL proceedings in *In Re Fosamax Prods. Liab. Litig.*, and that all other  
25  
26  
27

1 proceedings in this action should be stayed until such time.<sup>1</sup> McKesson joins in  
2 Merck's Opposition to the motion to remand and in the Motion to Stay in all  
3 respects.

#### 4 STANDARD OF LAW

5 "A trial court may, with propriety, find it is efficient for its own docket and the  
6 fairest course for the parties to enter a stay of an action before it, pending resolution  
7 of independent proceedings which bear upon the case." *Leyva v. Certified Grocers*  
8 *of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also Landis v. North*  
9 *American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) ("[T]he power  
10 to stay proceedings is incidental to the power inherent in every court to control the  
11 disposition of the causes on its docket with economy of time and effort for itself, for  
12 counsel, and for litigants.").

#### 13 DISCUSSION

14 A stay of all proceedings until such time as the JPML renders its final  
15 decision regarding transfer is in the interest of judicial economy. A steady succession  
16 of cases involving the drug Fosamax are being filed in this district and other districts  
17 throughout the country and are awaiting transfer to the MDL proceedings.<sup>2</sup> Given  
18 the similarity of this litigation to other recent pharmaceutical products liability  
19 litigation, the Court finds that there are likely to be many more cases (in this district  
20 or otherwise) which present the precise question of the propriety of joinder of

21

22 <sup>1</sup>Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict  
23 Litigation, the JMPL issued a Conditional Transfer Order on December 27, 2006. Plaintiffs were  
24 required to file a Motion to Vacate that Order on or before January 25, 2007. *See Request for*  
*Judicial Notice in Support of Merck & Co., Inc.'s Opposition to Plaintiff's Motion to Remand,*  
*Exhibits 3-4.*

25 <sup>2</sup> According to the JPML website, there are now 77 actions pending in MDL No. 1789, *In Re:*  
26 *Fosamax Prods. Liab. Litig.* *See* [http://www.jpml.uscourts.gov/Pending\\_MDLS/pending\\_mdls.html](http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html) (follow "Distribution of Pending MDL Dockets").  
27

1 Defendant McKesson and/or other "distributor" defendants.<sup>3</sup> Consideration of  
2 Plaintiffs' remand motion by this Court at this juncture would therefore run the risk  
3 of inconsistent rulings between different judges in different districts and/or would  
4 constitute an inefficient use of judicial resources. *Cf. Stempien v. Eli Lilly & Co.*,  
5 2006 U.S. Dist. LEXIS 28408 \*4 (N.D. Cal. 2006) ("[E]ven if the Court were to grant  
6 Plaintiffs' motion to relate all Zyprexa cases naming McKesson Corporation in this  
7 district, judges in other California districts would nonetheless have to decide the  
8 issue, thus resulting in unnecessarily duplicative litigation, an inefficient use of  
9 judicial resources, and the risk of inconsistent results.").

#### 10 CONCLUSION

11 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay  
12 Proceedings (docket no. 14) is **GRANTED**. Proceedings in this case are STAYED  
13 until issuance of a final decision by the JPML regarding transfer or for sixty (60)  
14 days, whichever is earlier.

15 //

16 //

17 //

18 //

19 //

20

---

21 <sup>3</sup>As Defendants point out, two Fosamax cases which name both Merck and McKesson as  
22 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern  
23 Districts of California. *See* Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s  
24 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibit 3. The Court takes judicial  
25 notice of the fact that Merck is raising the same issues of fraudulent joinder in those cases and has  
26 filed a similar motion to stay proceedings pending possible transfer to the MDL action in the  
27 Northern District case. *See* Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria Citizens*  
*Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice of  
"proceedings in other courts, both within and without the federal judicial system, if those  
proceedings have a direct relation to matters at issue.").

Case 2:06-cv-07733-FMC-PJW Document 21 Filed 02/02/2007 Page 5 of 5

1           Plaintiffs' Motion to Remand (docket no. 11) is **DENIED** without prejudice  
2 to the filing of a renewed motion if transfer is denied.

3  
4 **IT IS SO ORDERED.**

5 Dated: February   4  , 2006

6  
7  
8   
9 **FLORENCE-MARIE COOPER, JUDGE**  
10 **UNITED STATES DISTRICT COURT**  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27